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TO: SUPERVISOR YVONNE BRATHWAITE BURKE, Chair
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SUPERVISOR DON KNABE
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FROM: LLOYD W. PELLMAN
County Counsel

RE: **Final Decision by E.R.C.O.M. in Union of American
Physicians and Dentists Unfair Labor Charge Case**

The County's Employee Relations Commission (E.R.C.O.M.) today rendered its Decision and Order in the unfair labor charge case filed last year by the Union of American Physicians and Dentists (U.A.P.D.). The Union filed the charge based on the County's substitution of a represented employee benefit package for these employees in place of the Flex/Megaflex package after the conclusion of bargaining.

E.R.C.O.M.'s decision is that the County negotiated with the Union in good faith, and did not commit an unfair labor practice by refusing to accede to the Union's demand that these employees retain the Flex/Megaflex benefits. Implicit in the decision is a finding that the County did not discriminate against these employees based on their becoming represented by the Union.

We expect that the Union will challenge the decision in Superior Court, and we will notify you of developments. Enclosed is a copy of this important administrative ruling.

LWP:LJT:dh
Enclosure

c: David E. Janssen, Chief Administrative Officer
Violet Varona-Lukens, Executive Officer, Board of Supervisors
Dr. Thomas L. Garthwaite, Department of Health Services

**LOS ANGELES COUNTY
EMPLOYEE RELATIONS COMMISSION**

In the Matter of)	
)	
UNION OF AMERICAN PHYSICIANS)	
AND DENTISTS)	UFC 23.17 & UFC 23.19
)	(CONSOLIDATED)
)	
Charging Party,)	DECISION AND
)	ORDER
)	
And)	
)	
COUNTY OF LOS ANGELES)	
CHIEF ADMINISTRATIVE OFFICE,)	
)	
Respondent.)	
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UNION OF AMERICAN PHYSICIANS		
AND DENTISTS		
Charging Party,		
And		
LOS ANGELES COUNTY		
DEPARTMENT OF HEALTH		
SERVICES,		
Respondent.		
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On or about November 2, 2000, the Union of American Physicians and Dentists (UAPD) filed charges against the Chief Administrative Office (CAO) alleging a violation of Sections 12(a)(1) and (3) of the Employee Relations Ordinance attributed to bad faith bargaining conduct during negotiations for an initial memorandum of understanding for Physicians (UFC 23.17).

Thereafter on October 19, 2001, the Union of American Physicians and Dentists (UAPD), filed an Unfair Labor Practice Charge with the Employee Relations Commission alleging that the Department of Health Services had violated Section 12 (a) (1) and (3) of the Employee Relations Ordinance by circulating a decertification petition at Olive View Medical Center. According to the Charging Party, the primary issue over the decertification campaign was the issue of MegaFlex/Flex benefits.

The Commission consolidated the two Charges and appointed Frederic R. Horowitz as Hearing Officer. Hearings were held on March 18 and April 9, 2002, and the matter was submitted to the Hearing Officer on June 6, 2002. On August 22, 2002, the Hearing Officer submitted his Report and Recommendations to the Commission. Thereafter on September 27, 2002, the Charging Party filed Exceptions with the Commission, and the Respondent filed a Statement in Opposition on October 21, 2002. At this point, the matter stands submitted.

ANALYSIS

Regarding the main Charge, UFC 23.17, the Hearing Officer found that:

"There is no evidence of any delays or dilatory tactics by the County in the course of these negotiations other than the allegation by UAPD of unlawful intransigence by management on the issue of benefits." [Report, p. 11]

In essence, the UAPD contends that the County's firm position regarding eligibility for MegaFlex/Flex benefits was 'over the line' and constituted bad faith bargaining. We concur with the Hearing Officer's analysis:

"Yet the mere fact UAPD, the physicians affected, and Fact Finder did not agree with the wisdom or necessity of management's abject refusal to extend eligibility for MegaFlex/Flex to represented employees does not automatically render the position of the County to be illegal." [Rpt., p.13]

As the Hearing Officer concluded:

"There is no evidence in this proceeding the County's negotiators at the bargaining table asserted that eligibility for MegaFlex/Flex was not negotiable. Because the County was not precluded from extending coverage under MegaFlex/Flex to the newly represented physicians, there is no basis for finding County Code §§ 5.27.020 K. and L. violates the ERO or the Government Code §§ 3502, 3506 and 3507 by making an

impermissible distinction based on represented status as employees. [Rpt., p12]

The Exceptions filed to the Hearing Officer's Report by the UAPD focus on three areas: (1) the Report was late, (2) the Hearing Officer did not systematically analyze each case cited by the Charging Party, and (3) the Hearing Officer is simply incorrect in his conclusion that there was no bad faith bargaining. We will address items one and two, inasmuch as our decision on the merits is to accept the Hearing Officer's Report and Recommendations as the Decision and Order of this Commission.

Regarding the timeliness of the Hearing Officer's Report, this was a complex case and the Commission is more interested in a thorough Report than in slavish adherence to time limits. Further, it should be pointed out that the Rules provide no express penalty or action in the event that a Hearing Officer is unable to provide a Report within 30 days of the conclusion of the hearing. And it is not unheard of for a party to an ERCOM proceeding to file documents late, without penalty.

As to the contention that the Hearing Officer failed to expressly analyze each case cited by the Charging Party, we agree with the Respondent's Statement of Opposition:

"Indeed, there is nothing in the ERCOM Rules which requires a Hearing Officer to explicitly address cases cited by a party in a brief. Moreover, each of these cases was discussed at length by the parties in their post-hearing briefs, and, as such, considered by the Hearing Officer. One need look no further than the Report itself to see that the Hearing Officer incorporated the reasoning of these cases into his analysis of the evidence." [Opposition, p.2]

As to the companion Charge UFC 23.19, having to do with the sending of a memo to five or six subordinate physicians, we concur with the Hearing Officer's analysis:

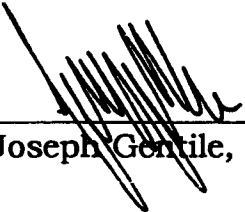
*"Under these circumstances, the claim by the County the memo did not cause any harm and any violation was thereby **de minimis** is established by the evidence. In light of the prompt, corrective action taken by Dr. Loos and lack of evidence of any adverse impact on the doctors' exercise of their rights, a violation of the ERO has not been established." [Rpt., p.14-15]*

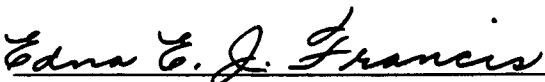
ORDER

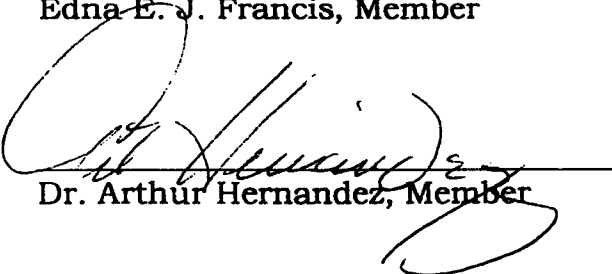
IT IS HEREBY ORDERED that the Hearing Officers Report in UFC 23.17 and 23.19 (Consolidated) be adopted as follows:

1. The County did not violate §§ 12(a)(1) and (3) of the Employee Relations Ordinance as alleged in the charges filed November 2, 2000 and October 19, 2002.
2. The Charges are dismissed.

DATED at Los Angeles, California, this 16th day of December 2002.



Joseph Gentile, Chair

Edna E. J. Francis, Member

Dr. Arthur Hernandez, Member